

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

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CYNTHIA ANNE DIVEGLIA  
formerly CYNTHIA ANNE KAYLOR,  
Plaintiff,

COPY

vs.

No. 1-CV-00-1342

NORTHWESTERN MUTUAL LIFE  
INSURANCE COMPANY,

Defendant.

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DEPOSITION OF DR. PATRICK I. BORGEN  
New York, New York  
Friday, May 21, 2004

Reported by:

THERESA TRAMONDO

JOB NO. 160707A

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Article number 48 is entitled "Patient Regrets After Bilateral Prophylactic Mastectomy." That's article number 48.

Also on page 13, article number 74, which is entitled "Issues of Regret in Women With Contralateral Prophylactic Mastectomies" deals with stress.

Article number 76 on page 13 is entitled "Cancer Specific Distress is Related to Women's Decision to Undergo BRCA 1 Testing."

There is an article that deals with stress as one of many factors, which is article number 122 on page 17, which is entitled "Factors Influencing Treatment Patterns of Breast Cancer Patients Age 75 and Older." I believe that's all.

Q. Doctor, I know it may have been a while since you participated in the writing of these articles, but referring to article number 31, do you recall what, if any, conclusions that you found in terms of the issue of stress?

A. I am sorry. Which?

Q. Article 31 on page 10.

A. Yes. We suspected that women overestimated their risk of developing breast

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2 cancer when they had a family history of breast  
3 cancer, and that that led to significant stress and  
4 anxiety and the result of that stress and anxiety  
5 was a lack of adherence to treatment or screening  
6 recommendations. Put another way, the more nervous  
7 you were about getting breast cancer, the less  
8 likely you were to get a mammogram, which is a  
9 little counterintuitive, but makes sense. The more  
10 worried a woman was the mammogram was going to show  
11 something, the less likely she was to get one. And  
12 this study demonstrated that if you counsel the  
13 patient and reduce the stress, they went on to get  
14 the mammograms and get the ultrasounds.

15 Q. So in the article number 31 there was no  
16 research or study of whether stress increased the  
17 likelihood of a recurrence of cancer?

18 A. That's correct. This study did not  
19 address that issue.

20 Q. Moving on to article 47 on page 11, do  
21 you recall what your conclusions were with respect  
22 to stress, if any, in that article?

23 A. This was a similar type of study with a  
24 similar type of conclusion to the one we just spoke  
25 about.

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2 Q. So there were no conclusions regarding  
3 stress and the risk of recurrence in that article?

4 A. That's correct.

5 Q. How about article 48, the same question,  
6 was there any -- or with respect to the issues of  
7 stress, what were your conclusions with respect to  
8 that article?

9 A. We found that bilateral prophylactic  
10 mastectomies significantly reduced stress and that  
11 the rate of patient regret was very low.

12 Q. You would agree then there was no  
13 research on conclusions made regarding stress and  
14 the recurrence of breast cancer in that article?

15 A. That's correct.

16 Q. Then, finally, Doctor -- I guess there  
17 are two more.

18 On page 13, article number 74, what  
19 conclusions did you make, if any, regarding stress  
20 in that article?

21 A. It would have been the same findings and  
22 conclusions as the article we just spoke about.

23 Q. So there were no conclusions made  
24 regarding stress and recurrence of breast cancer?

25 A. In this study, that's correct.

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2 Q. Then, finally, Doctor, I think number 76  
3 was the last one you identified. I am sorry.  
4 That's not true.

5 Referring to article 76, what  
6 conclusions, if any, did you make regarding stress  
7 in that article?

8 A. This was a study that looked at why a  
9 minority of women who are candidates for gene  
10 testing actually elect to have gene testing.

11 Q. So once again there were no conclusions  
12 made regarding stress and the risk of recurrence?

13 A. Correct.

14 Q. And, finally, Doctor, I think number 122  
15 on page 17, what were the conclusions, if any,  
16 regarding stress in that study?

17 A. This study actually found that there was  
18 a tendency towards undertreating patients because  
19 of their age, and some of that had to do with  
20 stress both on the doctor's part and on the  
21 patient's part. It had to do with competing risk  
22 factors, comorbid risk factors, and so the stress  
23 there was in the treatment recommended and the  
24 treatment accepted. And the conclusion was that  
25 there was a somewhat concerning trend towards

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undertreating patients because of their age.

Q. Again, you would agree that there were no conclusions regarding stress and the risk of recurrence in that article?

A. I would agree with that.

Q. Doctor, you're not a lawyer, correct?

A. I'm definitely not a lawyer.

Q. Did you ever have any legal training?

A. No. I've been married to a lawyer for 17 years. I don't know if you could grandfather me in for that.

Q. Yes, you probably could be grandfathered in.

Doctor, do you know what the responsibilities are of a trial lawyer?

A. I do.

Q. Is your wife a trial lawyer?

A. She is.

Q. Just explain briefly what a trial lawyer does.

A. From my perspective of my wife and/or my -- just my understanding of it?

Q. Your understanding, I guess, first.

A. Well, I know that, you know, it's a

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2 very, very broad question. I think that if we take  
3 the example of my wife, she was a litigator, and so  
4 she spent long hours -- I say past tense because  
5 she's been on sabbatical for a couple of years, but  
6 what I saw was her spending very, very long hours  
7 traveling, preparing cases, and then actually  
8 taking the case into the courtroom and trying the  
9 cases.

10 Q. How often would your wife be in court  
11 over the course of a year?

12 A. I would say they probably tried between  
13 six and ten major cases a year.

14 Q. Did your wife ever suffer any type or  
15 form of cancer?

16 MR. DIVEGLIA: I would object as that's  
17 not relevant to these proceedings. He didn't  
18 say any of his opinions were based on that. I  
19 object to the question. I believe the doctor  
20 can decide whether he wants to answer that  
21 question.

22 A. Thankfully, no, she has not.

23 Q. Doctor, do you agree that the duties of  
24 a trial lawyer may be stressful to one person and  
25 not stressful to another person?